Supreme Court, U.S.
FILED

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

CHARLES M. BOWNDS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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October 8, 1997

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QUESTIONS PRESENTED

(1) Whether or not 18 U.S.C.A. 922 (o) of the Firearms Owner Protection Act prohibiting unlawful or possession of a machine gun violates the 10th Amendment of the United States Constitution?

(2) Whether or not 18 U.S.C.A. 922(o) of the Firearms Owner Protection Act prohibiting unlawful transfer or possession of a machine gun violates the 2nd Amendment of the United States Constitution?

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CITATION OF OFFICIAL ORDERS AND OPINIONS ENTERED

United States of America v. Charles M. Bownds, 860 F.Supp. 366 (S.D. of Miss. 1994).

In the United States Court of Appeals for the Fifth Circuit.

Cited as U. S. v. Bownds, No. 94-60620, United States District Court, No. 3:94-CR-50-3BN.

STATEMENT FOR THE BASIS OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C.A. 1254(1), Judgment in Case No. 94-60620, In the United States Court of Appeals for the Fifth Circuit reversing and remanding the District Court Judgment on April 29, 1997.

STATUTES AND CONSTITUTIONAL PROVISIONS

1. 18 U.S.C.A. Section 922(o)

(o)(1) Except as provided in paragraph 2, it shall be unlawful for any person to transfer or possess a machine gun.

(2) This subsection does not apply with respect to:

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machine gun that was lawfully possessed before the date that this subsection takes effect.

2. United States Constitution, Amendment X

The powers not delegated in the United States by the Constitution nor prohibited by it to the states are reserved to the states respectfully, or to the people.

3. United States Constitution, Article 1, Section 8, Clause 3

The Congress shall have the power to regulate commerce with foreign nations and among several states and with the Indian Tribes. U.S. Const., Art., I, Section 8, Clause 3.

4. United States Constitution Amendment II

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

CONCISE STATEMENT OF FACTS MATERIAL TO THE QUESTION PRESENTED

That jurisdiction is proper in this Court. The Defendant having been indicted under a violation of Federal Laws, specifically 18 U.S.C.A. 922(o), that the Defendant Charles M. Bownds was indicted for the unlawful transfer or possession of machine gun in violation of 18 U.S.C.A. 922(o). The United States Government alleged that Charles M. Bownds purchased two Sten machine guns and other firearm components at a gun show in New Jersey in early 1991 for $300.00. In April of 1991, the government alleged that Bownds sold the machine guns to Randy and Danny Hammond in Jackson, Mississippi for $1,500.00. Subsequent to the charge and indictment by the United States Government, the Defendant moved the District Court, Chief Judge William Barbour, to dismiss the indictment for violation of the 10th Amendment of the United States Constitution since in its passage Congress made no finding, rationally based or otherwise, nor placed any statutory requirement within the section of an interstate commerce nexus between the possession of a machine

gun and crime. The Defendant further alleged that Congress did not base 18 U.S.C.A. 922(o) upon any other appropriate findings that would indicate congressional authority to legislate the prohibition of possession or transfer of automatic weapons.

The Defendant relied upon United States v. Lopez, 2 F.3d 1342 (5th Cir. 1993), 114 S.Ct. 1536 128 L.Ed. 2d 189 1994. In this decision, which was upheld by this Court, the Fifth Circuit concluded that Section 18 U.S.C.A. 922(o) was invalid as beyond the power of Congress. In so holding the Fifth Circuit Court of Appeals declined to rule on the Constitutionality of 922(o). That District Court Chief Judge William Barbour relying upon United States v. Lopez, 2 F.3d 1356, held that the power of Congress to regulate under the commerce clause was not without limit. The District Court expressed concern over the increasing federalization of crime by Congress where such federalization occurred in apparent disregard of the 10th Amendment mandate that rights not be delegated to the Federal Government be reserved to the states. The District Court expressed no opinion as to the power of Congress to regulate the possession of machine guns at a national level but did find that Congress made no finding explicit of implied to support any authority to ban the mere possession of machine guns. As a result, the District Court found 18

U.S.C.A. 922(o) unconstitutional and ordered the indictment against the Defendant dismissed.

Thereafter, the United States Attorney for the Southern District of Mississippi appealed to the Fifth Circuit Court of Appeals. The Defendant had also moved to dismiss the indictment on grounds that his rights to a speedy trial were violated. The District Court denied that motion and the Defendant cross-appealed. The Fifth Circuit Court of Appeals consolidated both cases because they presented issues which were intertwined and on April 29, 1997, the Court of Appeals reversed the District Court's conclusion that 18 U.S.C.A. 922(o) was constitutional and reinstated the indictment and remanded for further proceedings relying upon United States v. Kirk, 105 F.3d 977 (5th cir. 1997), which was decided en banc and affirmed by the Court upholding the three judge panel opinion the en banc splitting evenly. The Fifth Circuit dismissed the Defendant's cross-appeal of the Motion to Dismiss for failure to be granted a speedy trial. That subsequent to the reversal and remand of this present action, the Defendant in United States v. Kirk, 105 F.3d 997 (5th Cir. 1997), applied for a Writ of Certiorari before this Court.

CONCLUSION

The Defendant believes that the facts present an important question of Federal Law which should be settled by this Court. The issue of Congress overreaching their authority under the Commerce Clause and continued federalization of criminal law is significant. That viewed in light of this Courts mandate in United States v. Lopez, 2 F.3d 1342 (5th Cir. 1993), it is likely that 18 U.S.C.A. 922(o) is unconstitutional. That the question of its unconstitutionality is unsettled is apparent by the Fifth Circuits evenly divided en banc rehearing of United States v. Kirk, 105 F.3d 977 (5th Cir. 1997)(en banc). The Defendant Bownds therefore respectfully requests this Court to grant Defendant's Petition for Certiorari.

DATED: October 8, 1997

Respectfully submitted,

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APPENDIX A

In The

United States Court of Appeals for the Fifth Circuit

No. 94-60620
No. 94-60651

UNITED STATES OF AMERICA, Plaintiff-Appellee,

versus

CHARLES M. BOWNDS, Defendant-Appellant.

Appeals from the United States District Court

for the Southern District of Mississippi

(3:94 CR 50 3 BN)

U. S. Court of Appeals
FILED
April 29, 1997
Charles R. Fulbruge, III, Clerk

Before DAVIS, EMILIO M. GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited

This is a consolidated appeal. Charles M. Bownds was charged in three counts of a five-count indictment for conspiring to possess and transfer two machine guns in violation of 18 U.S.C. §§ 971, 922(o)(1), and 924(a)(2) (Count 1); aiding and abetting the possession of two machine guns in violation of 18 U.S.C. §§ 2, 922(o)(1), and 924 (a)(2) (Count 2); and aiding and abetting the transfer of two machine guns in violation of 18 U.S.C. §§ 2, 922(o)(1), and 924 (a)(2) (Count 3).

Bownds filed two pretrial motions. First, he moved to dismiss the indictment on the ground that § 922(o) violated the Tenth Amendment as an unconstitutional exercise of Congress's Commerce Clause power. Second, Bownds moved to dismiss the indictment on the ground that his rights to a speedy trial were violated. The district court denied Bownds's second motion, but granted his first motion, declaring § 922(o) unconstitutional on Commerce Clause grounds.

The Government appealed the district court's dismissal of the indictment (case number 94-60620) and Bownds appealed the district court's denial of his speedy trial motion (case number 94-60651). We consolidated the two cases because they presented issues that are intertwined.

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circumstances set forth in Local Rule 47.5.4.

DISPOSITION

As to case number 94-60620, we REVERSE the district court's conclusion that § 922(o) is unconstitutional, reinstate the indictment, and REMAND for further proceedings. United States v. Kirk, 105 F.3d 997 (5th Cir. 1997) (en banc) (affirming, by en equally divided en banc court, the three-judge panel opinion upholding the constitutionality of § 922(o)).

As to case number 94-60651, we DISMISS the appeal because the denial of a motion to dismiss an indictment on speedy trial grounds is not an appealable order. See United States v. MacDonald, 435 U.S. 850, 856-57 (1978); United States v. Crawford Enterprises, Inc., 754 F.2d 1272, 1273 (5th Cir. 1985); United States v. Bailey, 512 F.2d 833, 837-38 (5th Cir.), cert. dismissed, 423 U.S. 1039 (1975).

APPENDIX B

In The

United States Court of Appeals for the Fifth Circuit

No. 94-60620

UNITED STATES OF AMERICA, Appellant

V.

CHARLES M. BOWNDS, Appellee

No. 94-60651

UNITED STATES OF AMERICA, Appellee

V.

CHARLES M. BOWNDS, Appellant

Appeals from the United States District Court for the

Southern District of Mississippi, Jackson

U. S. Court of Appeals
FILED
September 19, 1995
Charles R. Fulbruge, III
Clerk

ORDER:

IT IS ORDERED that the Motion of appellant, United States of America, in 94-60620 and appellee in 94-60651 to consolidate the referenced appeals with 95-60445 is Granted.

"s/ Carl E. Stewart
CARL E. STEWART
UNITED STATES CIRCUIT JUDGE

APPENDIX C

Cite as: 860 F.Supp. 336

UNITED STATES OF AMERICA

V.

CHARLES M. BOWNDS

Crim. A. No. 3:94-CR-50BN.

United States District Court,
S. D. Mississippi,
Jackson Division.

August 18, 1994

After being indicted for unlawful transfer or possession of machine gun, defendant moved to dismiss indictment. The District Court, Barbour, Chief Judge, held that Firearm Owner's Protection Act provision prohibiting unlawful transfer or possession of machine gun violated Tenth Amendment.

Indictment dismissed.

[1] CONSTITUTIONAL LAW 48(1)
92k48(1)
Congressional enactments are presumed constitutional.

[2] STATES 4.16(2)
360k4.16(2)

Firearm Owner's Protection Act provision prohibiting unlawful transfer or possession of machine gun violated Tenth Amendment; Congress made no findings, explicit or implied, to support its authority to ban mere possession of machine guns, such as interstate nexus. 18 U.S.C.A § 922(o); U.S.C.A. Const. Art. 1, § 8, cl. 3; Amend. 10.

[2] WEAPONS 3
406k3

Firearm Owner's Protection Act provision prohibiting unlawful transfer or possession of machine gun violated Tenth Amendment; Congress made no findings, explicit or implied, to support its authority to ban mere possession of machine guns, such as interstate nexus. 18 U.S.C.A. § 922(o); U.S.C.A. Const. Art. 1, § 8, cl. 3; Amend. 10.

[3] COMMERCE 5
83k5

Congress may regulate individual's activity if such activity exerts substantial economic effect on interstate commerce, regardless of whether that effect is direct or indirect. U.S.C.A. Const. Art. 1, § 8, cl. 3.

***377** Woody Bond, U.S. Atty., for U.S.

Sam Wilkins, Kenneth K. Crites, George Lucas, Williford Randolph Hammond, Jackson, MS, James Daniel Hammond, Jr., Flora, MS, Charles McDonald Bownds, Pikeville, TN, for defendant.

OPINION AND ORDER

BARBOUR, Chief Judge.

The Court has before it the Motion of Defendant Charles M. Bownds to Dismiss Indictment for Unconstitutionality. The Court, having considered the motion, the memoranda of the parties and the arguments of counsel, finds the motion is well taken and order the indictment dismissed.

Defendant Charles Bownds was indicted for a violation of 18 U.S.C. section 922(o), which reads in its entirety as follows:

> (o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.
>
> (2) This subsection does not apply with respect to -
>
> (A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or
>
> (B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

18 U.S.C. § 922(o). The government alleges that Charles Bownds purchased two Sten machineguns and other firearms components at a gun show in New Jersey in early 1991, for $300. In April, 1991, Mr. Bownds allegedly sold the machineguns to Randy and Danny Hammond in Jackson, Mississippi for $1500.

Defendant avers that the section is in violation of the Tenth Amendment [FN1] since, in its passage of section 922(o), Congress made no finding (rationally based or otherwise), nor placed any statutory requirement within the section, of an interstate commerce nexus between mere possession of a machinegun and crime, nor did Congress base the statute upon other appropriate findings that would indicate Congressional authority to legislate in this area.

> FN1. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X.

Defendant cites a recent decision in which the Court of Appeals for the Fifth Circuit ruled unconstitutional 18 U.S.C. section 922(q), the so-called "Gun-Free School Zones Act of 1990." U. S. v. Lopez, 2 F.3d 1342 (5th Cir. 1993), cert. granted, --- U. S. ---, 114 S.Ct. 1536, 128 L.Ed.2d 189 (1994).

In that decision the Fifth Circuit considered not only the legislative history behind section 922(q), but also the history of the Firearm Owner's Protection Act of 1986 generally, as well as the language of other relevant sections, including section 922(o). Id. [FN2]

> FN2. This Court notes a more recent opinion, United States v. Ardoin, 19 F.3d 177 (5th Cir. 1994) in which the Fifth Circuit adopted that portion of a Fourth Circuit opinion, United States v. Jones, 976 F.2d 176 (4th Cir. 1992), cert. denied, 508 U.S. 914, 113 S.Ct. 2351, 124 L.Ed.2d 260 (1993), in which that court held that 18 U.S.C. section 922(o) did not implicitly overrule those sections of the National Firearms Act ("NFA") that regulate machineguns. In adopting the analysis of the Fourth Circuit the Fifth Circuit wrote: "The NFA can be upheld on the preserved, but unused, power [of Congress] to tax or on the power to regulate interstate commerce." Ardoin, 19 F.3d at 180. However, the Fifth Circuit seemed to limit its acceptance of the analysis of the Fourth Circuit, writing, "Of course, as we have recently noted, Congress's power to regulate firearms under the Commerce Clause is not unlimited. See United States v. Lopez, 2 F.3d 1342 (5th Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3645 (U.S. Fed. 2, 1994) (No. 93-1260)." Ardoin, 19 F.3d at 180 n. 5. This Court will therefore focus on the Lopez opinion as the basis of its Commerce Clause analysis.

Although the Court concluded "that section 922(q), in the full reach of its terms, is invalid as beyond the power of Congress *338 under the

Commerce Clause," [FN3] Lopez, 2 F.3d at 1367-68, it declined to rule on the constitutionality of 922(o), the machinegun possession section:

> FN3. "The Congress shall have Power. . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., Art. I, § 8, cl. 3.

The other Firearms Owners' Protection Act change relevant in this connection is its section 102(9), 100 Stat. 452-53, adding a new section 922(o). . . . There is no committee report, and sparse legislative history, concerning this provision, as its was added on the House floor. The only apparent explanation for it is the statement of its sponsor, Representative Hughes, that "I do not know why anyone would object to the banning of machine guns." See Farmer v. Higgins, 907 F.2d 1041, 1044-45 (11th Cir. 1990). While section 922(o) is a closer parallel than others to section 922(q) presently before us, as both sections denounce mere possession with no express tie either to interstate commerce or other federalizing element, we decline to read into section 922(o) any implied Congressional determination that possession of firearms generally, or within one thousand feet of any school grounds, affects interstate commerce. Section 922(o) is restricted to a narrow class of highly destructive, sophisticated weapons that have been either manufactured or imported after enactment of the Firearms Owners' Protection Act, (footnote omitted) which is more suggestive of a nexus to or

affect on interstate or foreign commerce than possession of any firearms whatever, no matter when or where originated, within one thousand feet of the grounds of any school.

Id. at 1356. (emphasis added). In the footnote omitted from the paragraph above, the Court suggests that section 922(o)(2)(B), which impliedly makes unlawful the possession of those machine guns possessed unlawfully before the enactment of the statute, is constitutional, since "there would be a jurisdictional nexus in the federal law making that earlier possession unlawful, such as the National Firearms Act or various provision of Chapter 44 of Title 18." Id. at n. 29. However, the Fifth Circuit makes no such suggestion as to the constitutionality of current section 922(o).

In its detailed consideration of the Firearms Owners' Protection Act of 1986 and its various statutory predecessors, the Fifth Circuit notes that certain sections of the Act, such as 922(g), reach only those firearms that have been transported in interstate or foreign commerce, and are thus constitutional. Id. at 1348 (citing United States v. Wallace, 889 F.2d 580, 583 (5th Cir. 1989), cert. denied, 497 U.S. 1006, 110 S.Ct. 3243, 111 L.Ed.2d 753 (1990)). The Court notes that other sections, such as 922(a)(6) (false statement in acquisition of firearm from licensed dealer, manufacturer, or importer),

922(b)(1) and (2) (sale or delivery by licensed dealer, manufacturer, or importer to a minor or in violation of state law), 922(b)(4) (sale or delivery by licensed dealer, manufacturer, or importer of certain specified weapons, such as machineguns or short-barrelled rifles), and 922(m) (record keeping violations by licensed dealer, manufacturer, or importer), wear the cloak of constitutionality because the proscriptions themselves pertain to essentially commercial firearms actions "as opposed to mere simple possession by any individual," and because each section is tied to the federal licensing of the dealer, manufacturer, or importer. Lopez, 2 F.3d at 1348. Finally, the Court notes that Congress constitutionally regulated machineguns under the National Firearms Act of 1934, but only under its taxing power, id. at 1349, and the Court finds no such support for section 922(o) in the current act.

[1][2] Although "Congressional enactments are, of course, presumed constitutional," id. at 1364, a finding of constitutionality in this case is difficult where Congress has made no finding, formal or informal, in either the statute or legislative history, as to how the regulated activity substantially affects interstate commerce. Nor is this court convinced that the "highly destructive, sophisticated" nature of machine guns, standing alone, is an adequate ground upon which an interstate commerce nexus finding can be based. In the view of this Court, the fact that an item is dangerous does not

signify, *339 without more, that regulation of that item meets constitutional requirements for avoidance of the mandate of the Tenth Amendment.

While two circuits have found section 922(o) constitutional, [FN4] based on general findings of legislative intent, the reasoning and examination of the Congressional record by the Fifth Circuit seems to undermine the rationale of those opinions:

> FN4. See United States v. Hale, 978 F.2d 1016, 1018 (8th Cir. 1992), cert. denied, 507 U.S. 977, 113 S.Ct. 1614, 123 L.Ed.2d 174 (1993); United States v. Evans, 928 F.2d 858, 862 (9th Cir. 1991).

The only two circuit courts that have addressed a constitutional challenge to section 922(o), [United States v. Hale and United States v. Evans], have sustained it in reliance on Congressional findings that appear to us to be inapplicable in the present context, whatever relevance they might have to section 922(o). Hale states that, "The legislative history of section 922(o) indicates that Congress considered the relationship between the availability of machine guns, violent crime, and narcotics trafficking. See H.R.Rep. No. 495, 99th Cong., 2d Sess., at 1-5, reprinted in 1986 U.S.C.C.A.N. 1327, 1327-31." Id. at 1018. The only portion of the cited passage of the H.R.Rep No. 495 that relates to machine guns -- and it will be recalled that neither section 922(o) nor anything comparable to it was included in the bill (H.R. 4332) there being

considered -- is a discussion of the history of the legislation, including various earlier bills that did not become law. One of the earlier bills discussed was H.R. 3135, introduced August 1, 1985, and H.R.Rep. No. 495 observes that H.R. 3135 "prohibited the transfer and possession of machine guns, used by racketeers and drug traffickers for intimidation, murder and protection of drugs and the proceeds of crime. The bill allowed possessors of lawfully registered machine guns to continue their lawful possession." 1986 U.S.C.C.A.N. at 1330. Whatever this may say about machine guns, it says nothing about the mere possession of ordinary firearms.

Lopez, 2 F.3d at 1356 (emphasis added).

While the above passage makes it clear that the Congressional findings behind the machine gun section are at best ambiguous, the Fifth Circuit takes issue directly with other legislative history cited by the Eight and Ninth Circuit in support of their findings that section 922(o) is constitutional. As to the reliance of the Eight Circuit in Hale on Congressional findings behind the Omnibus Crime Control and Safe Streets Act of 1968, the Court writes:

> As previously discussed, those findings . . . do no more than speak to the need to regulate both interstate (and foreign) commerce in firearms and federally licensed dealers. . . . There is nothing to suggest any finding that mere private party intrastate

> possession of firearms that have not moved in interstate commerce has any effect on interstate commerce or must be regulated in order to effectively regulate interstate commerce.

Id. at 1357, n. 31. (emphasis added). Similarly, the Fifth Circuit criticizes the reliance of the Evans court on generalized findings by Congress of high firearms death rates, [FN5] writing:

> FN5. In Evans the Ninth Circuit stated: Congress specifically found that at least 750,000 people had been killed in the United States by firearms between the turn of the century and the time of the Act's enactment. It was thus reasonable for Congress to conclude that the possession of firearms affects the national economy, if only through the insurance industry. Since Evans does not contend that any specific Constitutional rights are implicated, this rather tenuous nexus between the activity regulated and interstate commerce is sufficient. United States v. Evans, 928 F.2d at 862 (rejected by Lopez, 2 F.3d at 1357 n. 31).

The Congressional finding alluded to [in the Evans opinion] is not contained in the Firearms Owners' Protection Act, and the only similar finding we can locate is that contained in H.Rep. No. 1577 in reference to H.R. 17735, which became the Gun Control Act of 1968. . . . Nothing in this committee report . . . suggests that mere intra-state possession of firearms that have not moved

in interstate commerce has any affect on interstate commerce or must be *340 regulated in order to effectively regulate interstate commerce.

Id. The Fifth Circuit concludes its analysis of the findings of the Hale and Evans decisions by stating unequivocally that "[w]e thus disagree with the general statements in Hale and Evans respecting the Omnibus Crime Control and Safe Streets Act of 1968 and the Gun Control Act of 1968." Id.

Conclusion

[3] Congress may regulate an individual's activity if such activity "exerts a substantial economic effect on interstate commerce," regardless of whether that effect is direct or indirect. Wickard v. Filburn, 317 U.S. 111, 125, 63 S.Ct. 82, 89, 87 L.Ed. 122 (1942). As broad as the language seems, the power of Congress to regulate under the Commerce Clause is not without limits. This Court is concerned over the increasing federalization of crime by Congress, when such federalization occurs in apparent disregard of the Tenth Amendment mandate that rights not delegated to the federal government be reserved to the States. Early in its Lopez opinion the Fifth Circuit wrote,"[T]he Tenth Amendment, though it does not purport to define the limits of the commerce power, obviously proceeds on the assumption that the reach of that power is not unlimited, else there would be nothing on which the Tenth Amendment could operate." Lopez, at 1347. While this Court

expresses no opinion as to the power of Congress to regulate possession of machine guns at a national level, it simply finds that Congress made no findings, explicit or implied, to support its authority to ban the mere possession of machine guns. The Tenth Amendment is still a part of the Constitution. It is not difficult for Congress to find an interstate nexus as a part of its legislative history process or for Congress to require an interstate nexus an element of the crime itself. [FN6] In light of the Fifth Circuit's recent holding in Lopez, this Court finds 18 U.S.C. § 922(o) unconstitutional and order the indictment against Defendant Charles Bownds dismissed.

> FN6. For example, Title 18 U.S.C. § 922(g) states: (g) It shall be unlawful for any person -- (1) Who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; . . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. 18 U.S.C. § 922(g)(1). In United States v. Wallace, 889 F.2d 508 (5th Cir. 1989), cert. denied, 497 U.S. 1006, 110 S.Ct. 3243, 111 L.Ed.2d 753 (1990), the Fifth Circuit rejected a challenge to the constitutionality of this statute based upon the defendant's contention that the words "in or affecting commerce," by virtue of the omission by Congress of the word "interstate," failed to limit the scope of the statute to only that commerce which could be characterized as interstate commerce.

> The court ruled that the omission of the word "interstate" was at most an oversight. Id. at 583. Then, after reviewing the legislative history of the statute, the court found that the clear congressional intent behind the statute was to extend the scope of the statute to the full extent of the interstate commerce power. Id. The court thus upheld the statute on the basis that § 922(g) reaches only those firearms that traveled in interstate or foreign commerce and is thus "constitutional." Id.

SO ORDERED.